

## **1538.5 CROSS-EXAMINATION OF RACIAL PROFILING**

**Officer, you were driving in a police car when you first encountered X's car**

**And you were following the car?**

**And you turned on your lights and sirens?**

**And you stopped the car.**

**You stopped the car on XYZ street correct?**

**How long had you been following the car before you pulled the car over?**

**And the reason you stopped the car was because it did not have a front license plate?**

**And this is a violation of the Vehicle Code?**

**Specifically, vehicle code section 5200(a), which requires that a car have a front license plate?**

**This is an infraction, correct?**

**Officer, how many traffic stops do you make a month?**

**How many did you make last month?**

**How many of those traffic stops involved African Americans?**

***If DA objects: Recent statistics kept by the SFPD show that African Americans are three times as likely to be stopped as their white counterparts.***

**Do you agree that you tend to stop more African American drivers than white drivers?**

**How many white drivers have you stopped in the past month for not having a front license plate?**

**How many white drivers have you stopped in the past six months for not having a front license plate?**

***If DA objects: Statistics kept by the SFPD show that African Americans are more likely to receive tickets for mechanical violations than other races.***

**So you stopped the car?**

**At what point did you look into the car to see the occupants?**

**And this was before you stopped the car?**

**And was this before you activated your lights?**

**And so you saw that the occupants were black before you activated your lights, correct?**

When you stop a car for not having a front license plate, what actions do you take?

This entitles you to stop a car and write a citation to the driver.

When did you first notice that there was no license plate on the front of the car?

Where was your police car when you noticed that there was no license plate?

Had you already looked to see who was in the car before you saw that there was no license plate?

You then approached the car with your partner, Officer Z?

And when you went up to the car, you asked everyone in the car for identification, is that true?

Everyone gave you an identification card is that right?

Mr. A gave you his identification?

Ms. B gave you her identification?

Mr. C gave you his identification?

Mr. A told you that he was the owner of the vehicle?

He also told you that Ms. B and Mr. C were about to buy the car and were only test driving it.

And both Ms. B and Mr. C confirmed this as well, correct?

And he showed you paperwork showing you that he was in the process of registering the car?

And he produced paperwork that showed that he had recently purchased the car?

And at this point, you had no reason to disbelieve that what Mr. A had told you?

But at that point, you went back to your car and did a records check to run their identifications and see who the car was registered to, correct?

And it took a few minutes for you to do this?

When you came back, you gave them their identifications back, correct?

At this point, Mr. A was getting ready to leave, and then you asked him to see the car paperwork again?

Then you came back and said that the plates didn't match the vehicle identification number.

Did you ask him to get out of the car before or after you asked him about the license plate not matching the vehicle identification number?

Did you explain to him why you were asking him to get out of the car?

Did you check the paperwork he had shown you earlier to see if the license plate on the paperwork was the same license plate on the back of the car?

So you ordered that Mr. A step outside of the car?

Why?

So you did this so you could speak to him away from the other two people. Ms. B and Mr. C?

Why was that necessary?

Up until the time you asked Mr. A to get out of the car, had you seen a gun or any weapon?

When Mr. A got out of the car, where did you have him stand?

How was he standing?

How long did he stand there?

And you took the paperwork and went back to your car?

And you had them wait there for about 30 minutes while you reviewed the paperwork?

And you came back and asked Mr. A why the rear plate didn't match the vehicle identification number?

And he told you that when he bought the car, that's the plate that was on the car.

And at that point you told Mr. A that you didn't believe him, correct?

[Establish that officer believes that client was guilty simply because he stammered when he spoke]

Now, in your report, you said that when you asked Mr. A about why the rear license plate did not match the VIN, he "sounded very nervous as he began to stammer as he spoke."

Do you think that just because a person stammers that means that they are nervous?

Do you ever stammer when you speak?

You stammer when you testify?

Does that mean that you are nervous?

Does that mean that you are hiding something?

Do your friends ever stammer when they talk?

Does that mean that they are hiding something?

Now, in referring to Mr. A's voice, you said, "This was very different from the calm and assertive tone of voice he used inside the vehicle earlier."

Did it bother you that Mr. A spoke to you with a calm and assertive tone of voice?

Why did you note that in your police report?

Were you surprised that a black person would speak to you in a calm and assertive tone of voice?

What was it about his voice that made you write that his voice was "calm"?

What was it about his voice that made you write that his voice was "assertive?"

If a person is assertive, does that make you suspect that they are hiding something?

If a black person is assertive, does that make you suspect that they are hiding something?

If a non-black person speaks to you in a calm and assertive tone of voice, is that something you would note in your police report?

How many times in the past have you noted that, for example, a white person spoke to you in a calm and assertive tone of voice?

So if you stopped a white person for a traffic violation, and they spoke to you in a calm and assertive tone of voice, would you note that in the police report?

If DA objects: we are attempting to determine what factors went into the officer's decision to search my client. He noted in his report that my client spoke in a calm and assertive tone of voice and then sounded nervous, so this is fair inquiry since the officer is relying on this in justifying his decision to search my client.

[Establish that "Nervous" Behavior May Be tied to officer's implicit bias]

Officer, have you ever been nervous?

Does that mean that you are hiding something?

Are there other reasons why you might get nervous?

What was it about Mr. A's behavior that made you believe he was nervous?

Is it unusual for a person to become nervous when they are stopped by the police, in your experience?

Have you ever witnessed people being nervous when you stopped them for a traffic violation?

Do you think that black people are more likely to be nervous than white people when they are stopped for a traffic violation?

Can you think of any white people you stopped in the last six months who became nervous when you stopped them?

What percentage of the white people you stopped in the last six months for a traffic violation became nervous when you interacted with them?

So if a white person initially is calm and assertive, and then they later become nervous, this is a factor you would include in your police report?

Have you ever encounter a white person who was calm and assertive and later became nervous? Did you write this in your report?

Mr. A told you to call the person he had bought the car from, a person named Timothy.

And you told Mr. A that you would not call this person, correct?

Mr. A asked you a second time to call this person named Timothy.

And at this point, you said, "Do you mind if I search you?"

And Mr. A refused?

He said that he did not want you to search him, correct?

He made this very clear to you.

At this point you asked him why, correct?

And Mr. A said that he did not feel obligated to have you search him, or words to that effect?

At this point, you started talking on your police radio.

You and your partner approached Mr. A correct?

And you asked him if he had any weapons?

And Mr. A said "no" isn't that correct?

At this point, you then started pulling Mr. A's hands behind his back.

He then told you, "There's no need to get crazy."

And it was at this point that he told you that he had a firearm in his right pocket.

And it was at this point that you handcuffed Mr. A?

Isn't it true that what you wrote in your police report about seeing a bulge in Mr. A's jacket is pure fiction?

You never saw a bulge. In fact, you didn't even detect or suspect that he had a weapon until he told you that he had a gun in his right pocket?

Now after Mr. A told you that he had a gun, isn't it true that your partner, Officer Z, came over, and started roughing him up a bit.

Isn't it true that it wasn't until after you handcuffed Mr. A that you looked into his right pocket?

The right pocket of Mr. A's jacket was zipped?

And you unzipped it while you had Mr. A handcuffed, correct?

Is this a picture of Mr. A handcuffed?

Who is holding him in the picture?

Isn't it true that you handcuffed him before you looked into this pocket?

Is this a picture of the gun inside Mr. A's jacket pocket?

Whose fingers are shown in that photo?

Isn't it true that you never saw a bulge in Mr. A's jacket?

Is it your testimony that this item (gun) was in the pocket of Mr. A's jacket and it created a bulge?

[Establish that Officer Presumed that Client Had Weapon When He Saw "Bulge"]

Now, after you asked Mr. A to get out of the car, he complied, is that right?

When he got out of the car, what did you direct him to do?

It was at this point that you say that you looked at his coat pocket and saw a bulge protruding from it. Is that your testimony?

Now you could not tell what was inside of it, correct?

Mr. A's coat was heavy and it was made out of leather-like material.

You could not see a gun?

You could not see a weapon?

Now, would you say that everyone who has a bulge in their jacket pocket has a weapon?

So it might or might not be a weapon?

At this point, you decided you were going to pat down Mr. A?

And you made this decision even though you could not tell whether or not he had a weapon in his jacket pocket?

For all you know, it could have been any object that was top heavy, causing a bulge?

You could not see the imprint of a gun?

You could not see any definitive shape or form that indicated that the object was a gun?

How many times have you stopped individuals for traffic stops and found a gun in the last six months?

How many of those people have been black?

Do you think it is more likely that a black person you stop for a traffic violation, ask them to get out of the car and see a bulge has a gun than say, a white person?

What about the fact that Mr. A was young and black?

Did this fact figure into your decision to conduct a pat search?

Did you look to see whether the driver of the car, Ms. B, had any bulges in her pockets? Is that because she was a woman?

[Establish that Officer has only had limited training in the areas of racial sensitivity and bias]

Have you received formal training as a police officer?

Have you received any training on racial bias?

What training have you received?

How many hours?

Who taught you?

What was the curriculum?

Have you ever taken the Implicit Association Test?

Have you ever undergone any testing to determine whether you suffer from racial bias?

Do you know what racial profiling is?

What is racial profiling?

Have you receiving any training on racial profiling?

Do you think that you've engaged in racial profiling in the past?

Do you think you feel more threatened by a young black male than an older white male who is a senior?

Do you think it's more likely that a young black male who has a bulge in his jacket pocket has a weapon than a young white female who has a bulge in her jacket?

So you would search either?

Now, when you saw the bulge in his jacket, you immediately asked him to place his hands over his head.

Is that your practice, whenever you see a bulge you tell them to place their hands over their head?

Why not handcuff the person?

Did you handcuff Mr. A before you pat searched him? Why not?

How do you conduct a pat down of a person?

Do you always ask them to put their hands over their heads?

Did you ask him to put his hands over his heads because you were afraid of what he might do?

Are there sometimes when you conduct pat down searches when you don't ask the person to place his or her hands over their head?

Now when you told Mr. A you were going to conduct a pat down search, he told you that you could not do it because it was his legal right to refuse.

And you said to him that due to the bulge in his right pocket which appeared to be a weapon, you were going to perform a pat down search?

But in fact you did not know the bulge was a weapon. In fact you specifically said in your report that it was an object, not a weapon. So you lied to him?

In fact, according to your report, you could not tell it was a weapon, you only believe it was a weapon because it was a top heavy object?

He made it clear to you that he did not wish to consent and give up his rights, but you still pat searched him anyway?

He complied when you searched him?

And you then patted down his pocket.

Now when you patted down Mr. A's pocket, this is when you recognized the object to be a firearm. In other words, you weren't sure what he had in his pocket until you actually touched his pocket and then felt a gun.



"I immediately patted down A's pocket and felt a metallic object with the outline of a pistol." So what you are saying in your report is that you didn't realize it was a gun until you felt a metallic object in his pocket.

You then write in your police report that "I immediately recognized the object to be a firearm upon first contact with A's coat." So you did not recognize the object to be a firearm before you had contact with A's coat, correct?

Thank you.

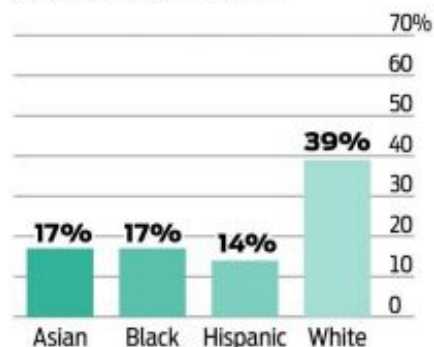
## Measuring race in traffic stops

In San Francisco, police officers are required, in an effort to combat racial profiling, to record the race of every driver stopped. In Oakland, officers are required to record the race of every subject during any encounter — whether the person is driving or on foot. Here are the most recent numbers from the two cities:

### SAN FRANCISCO

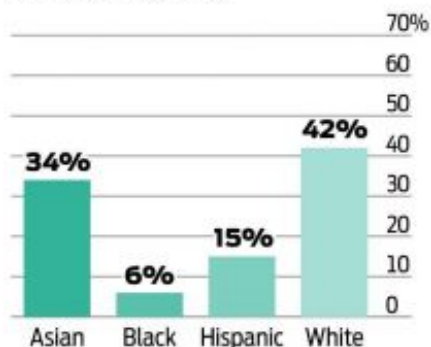
#### Drivers stopped, by race

January-December 2013



#### Demographics

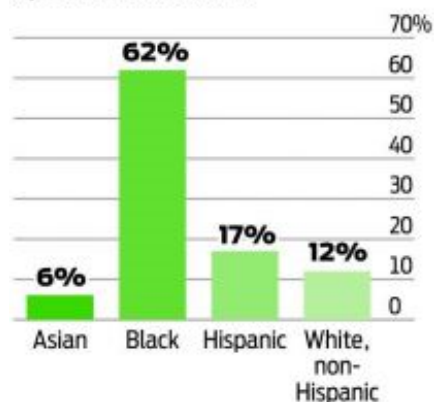
U.S. Census (2010)



### OAKLAND

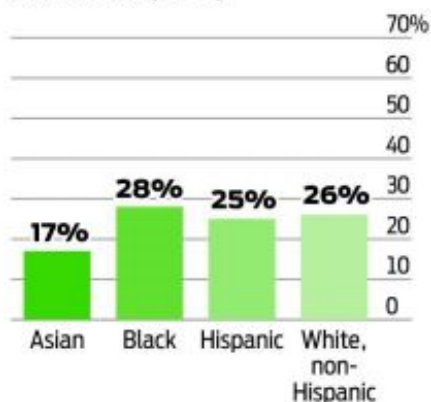
#### Total police stops, by race

April-November 2013



#### Demographics

U.S. Census (2010)



Note: Figures do not total 100 percent because not all categories of race are shown.

Sources: San Francisco and Oakland police departments, U.S. Census Bureau

Todd Trumbull / The Chronicle